DOCUMENT RESUME

ED 079 659 CG 008 202

TITLE	The Juvenile Court: A Status Report.
INSTITUTION	National Inst. of Mental Health, Rockville, Md. Center for Studies of Crime and Delinquency.
REPORT NO	DHEW-Pub-HSM-73-9073
PUB DATE	73
NOTE	28p.; Formerly DHEW-Pub-HSM-72-9115
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (HC-$0.35) Stock No. (HSM) 73-9073
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	Court Litigation; *Delinquency; Due Process; *Federal Legislation; *Historical Reviews; *Juvenile Courts; Laws; *Youth Problems

ABSTRACT

This brief monograph provides an historical perspective of the development of juvenile courts which, instead of developing as intended, have become paternalistic and punitive, paralleling the impact of a criminal court. The report examines the jurisdiction of the juvenile court as an organization, its judicial and prejudicial procedures, its use of detention, and its transfer of offenders to the adult criminal justice system. In conclusion, the report finds that, although the battle for procedural reform of the juvenile court has basically been won, nothing in the procedural revolution will: (1) keep runaways out of the institutions; (2) renovate uninhabitable housing which gives birth to so many juvenile problems; or (3) persuade parents to stop filing complaints of ungovernability on their children. The juvenile courts will continue to serve as the public repository of the private sector's failures. The need now is to examine seriously those conditions that produce a system that is not only unjust, but unsuccessful. (Author/LAA)

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NATIONAL INSTITUTE OF MENTAL HEALTH

The Juvenile Court

A Status Report

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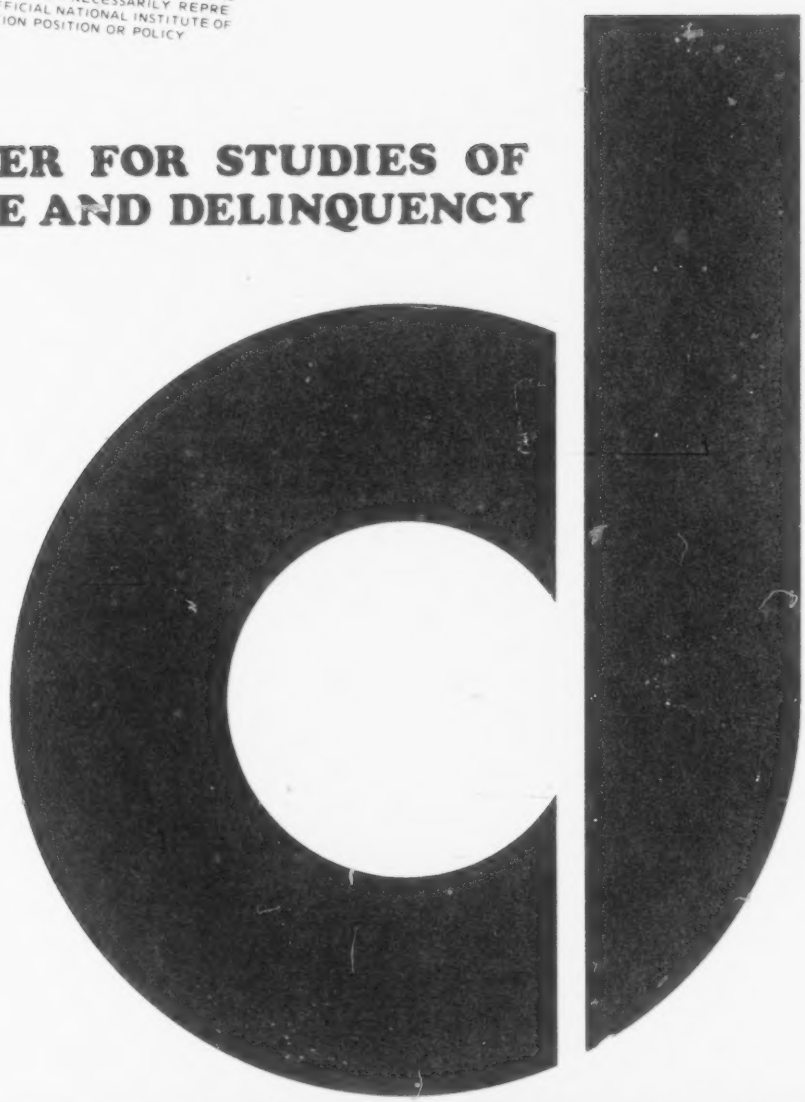

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CRIME AND DELINQUENCY TOPICS:

A Monograph Series

The Juvenile Court

A Status Report

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Center for Studies of Crime and Delinquency
5600 Fishers Lane
Rockville, Maryland 20852

The views expressed in this monograph do not necessarily reflect the position and policy of the National Institute of Mental Health or the Department of Health, Education, and Welfare.

DHEW Publication No. (HSM) 73-9073
(Formerly DHEW Publication No. (HSM) 72-9115)
Printed 1971 • Reprinted 1972 • Reprinted 1973

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402

Price 35 cents domestic postpaid or 25 cents GPO Bookstore

Foreword

This monograph is one of a series of literature reviews and evaluative discussions on current topics of significance in the area of crime and delinquency. These monographs are designed to inform program administrators, policy makers, and other interested persons about significant findings to date which may be useful in the development and improvement of programs in the crime and delinquency area, and about research gaps and needs.

Development of this series has been sponsored by the Center for Studies of Crime and Delinquency of the National Institute of Mental Health. The Crime and Delinquency Topics monographs were prepared by the National Council on Crime and Delinquency under a contract from the National Institute of Mental Health. This monograph, *The Juvenile Court: A Status Report*, was prepared by Jeffrey E. Glen, Associate Counsel, and J. Robert Weber, Director, Information Center, NCCD.

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An Historical Perspective

The first juvenile court law was passed by the Illinois Legislature in 1899. It established a separate, noncriminal procedure for children in Cook County who had violated the criminal law, or children who had been brought to the attention of the court as neglected, homeless, or otherwise disreputable.[1] The juvenile court movement soon spread throughout the United States, and some special legal provisions for delinquent and neglected youth had been passed in virtually every State by the 1920s.[2]

The juvenile court statutes were early attacked as unconstitutional on the grounds that they deprived children of such basic criminal law rights as the right to appear with counsel, to a jury trial, and to remain silent in the face of an accusation of crime. These efforts failed; the appellate courts looked upon the juvenile court process as a "civil inquiry, to determine whether, in a greater or lesser degree, some child should be taken under the direct care of the State and its officials to safeguard or foster his or her adolescent life."[3] Since the proceeding was in the child's interests, following this reasoning, procedural niceties, such as letting the child know why he was being taken away from home, were not essential. As the Pennsylvania Supreme Court put it, "The natural parent needs no process to temporarily deprive his child of its liberty . . . to save it and to shield it from the consequences of persistence in a career of waywardness, nor is the State, when compelled, as *parens patriae*, to take the place of father for the same purpose, required to adopt any process as a means of placing its hands upon the child and lead it into one of its courts."[4]

It must be recalled that in the early decades of this century, procedural due process was not a meaningful protection in the criminal law field, for either children or adults. In the Federal system the privilege against self-incrimination, the right to a jury trial, and the right to assigned counsel in major cases were all recognized during this time, but the State court systems were relatively free to operate as they wished, bound only by their own constitutions and State court interpretations. For example, the

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[1] Illinois Juvenile Court Act, Illinois Laws 1899, 131–137, reprinted in Ketcham, Orman W., and Paulsen, Monrad G., *Cases and Materials Relating to Juvenile Courts;* Brooklyn, New York: Foundation Press, 1967, pp. 17–20.

[2] See Lou, Herbert H., *Juvenile Courts in the United States;* Chapel Hill: University of North Carolina Press, 1927, pp. 13–31.

[3] *Cinque* v. *Boyd*, 99 Conn. 70 (1923).

[4] *Commonwealth* v. *Fisher*, 213 Pa. 48 (1905).

first right-to-counsel case coming from a State court to be decided in favor of the accused by the United States Supreme Court occurred in 1932.[5] Therefore, the lack of procedural progress through the appellate courts in relation to the rights of children is understandable, if not excusable.

In removing children from the jurisdiction of the criminal court by establishing the juvenile court the intent was to do away with both the punitive philosophy of the criminal court as well as the method of trial and punishment. A new philosophy was developed. The child was regarded as immature and thus not wholly responsible for his acts. The child was entitled to protection, rehabilitation, or retraining. The juvenile court was to act as a wise parent who would plan for the total welfare of the child rather than punish the child for a specific act.

A recent historical study of the development of the juvenile court argues that the founders of the juvenile court movement considered themselves involved in humanitarian work; however, their accomplishments contradict their libertarian and humanistic intentions.[6] Instead of developing as intended, the juvenile court became a paternalistic and punitive system paralleling the impact of a criminal court. Platt argues that in many ways the juvenile court movement was a step backward rather than the progressive move its founders believed.

In the 1940's and 50's, a shift toward formalism in the juvenile court became apparent. Courts required that the child and his parents be notified of the allegations of the petition and began to look critically at the use of hearsay evidence in the adjudication. Courts tightened up their interpretations of statutes defining delinquent behavior, requiring proof of a pattern of antisocial activity, and occasionally reversed commitments because the evidence did not justify such harsh treatment.[7]

Legislatures realized that many of the due process procedures hammered out in the criminal law are not mere formalisms or historical accidents, but are essential aids in uncovering the truth in any court, and in giving any person a fair chance to present his side of a case. Many States drew on the Standard Juvenile Court Act,[8] published by the National Council on Crime and Delinquency and endorsed by the National Council of Juvenile Court Judges, and the United States Children's Bureau as models of fair procedure in the juvenile court context.

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[5] *Powell* v. *Alabama*, 287 U.S. 45 (1932).

[6] Platt, Anthony M., *The Child Savers: The Invention of Delinquency;* Chicago: University of Chicago Press, 1969, 230 pp.

[7] See *State* v. *Myers*, 74 N.D. 297, 22 N.W. 2d 199 (1946); *State ex rel. Shaw* v. *Breon*, 244 Iowa 49, 55 N.W. 2d 565 (1952).

[8] Sixth Edition, National Council on Crime and Delinquency, 1959. Earlier editions had been pubished since the late 1920's.

Wisconsin and Minnesota revised their juvenile codes in the late 1950's, including elaborate notice requirements and controls over the admission of hearsay testimony.[9] Oregon and California rewrote their juvenile court laws to provide a full code of juvenile practice, governing intake, detention, and social reports, as well as the hearing itself.[10]

The Juvenile Court As an Organization

At the outset of the juvenile court movement, the "court" itself was conceived of as nothing more than a different set of procedures for dealing with youths. Thus, there were no "juvenile courts" as separate judicial entities.

In recent years, several alternative schemes for juvenile court organization have been tried. Some States, such as Connecticut and Utah, have established statewide juvenile courts, with their own judiciary, completely separate from the civil and criminal courts of the State. Other States, including California, Washington, and Ohio, have established separate divisions of their highest courts of general trial jurisdiction to deal solely with juvenile cases. Both patterns are approved in the Standard Juvenile Court Act.[11] In other States, including New Hampshire and North Carolina, the juvenile court remains a part of the misdemeanor trial courts, although separate operational provisions are provided by statute.

Since the juvenile court is empowered to deal with such vital issues as felony-grade allegations against children and termination of parental rights leading to adoption, maintaining the juvenile jurisdiction in an inferior court is indefensible. Further, there is a need to encourage uniformity of juvenile court practice throughout a State; this is best accomplished through the device of a board of juvenile court judges, which is only practicable where the juvenile court is either a separate court or is within the highest trial court.[12]

While the juvenile court may well have been the focus for research programs, rarely has the juvenile court itself been the focus of research. In a recent study, Emerson provides a detailed description of the operations of a juvenile court and describes the impact of the court on those children coming to the court and the wide range of social and institutional pressures impinging on the

[9] Wisconsin Children's Code, Wis. Stats. Ann. Ch. 48 (1955); Minnesota Stats. Ann. §260.01 ff (1959).

[10] Oregon Rev. Stats. Ch. 419 (1959); California Welfare and Institutions Code §§500 ff (1961).

[11] Standard Act §3.

[12] See Standard Juvenile Court Act, section 5.

court.[13] The study describes the court's personnel and their relations with the institutions comprising the working environment (schools, police, churches, social welfare agencies, etc.) and how these relations shape court activity. Against this background the study describes how the court deals with its caseload and focuses on the procedures by which the moral character of a child is defined. The study highlights the tension between exercising authority over a delinquent and at the same time trying to help a delinquent.

Vinter, in a similar study of one Michigan juvenile court, describes it as a people-processing organization concerned with children and youth whose behavior or whose situations violate the moral norms of the community.[14] Court processing of a child can result in a new public identity or social situation with long term consequences for the person processed. On the other hand, court processing can result in a youngster's obtaining services otherwise seldom available.

Aaron V. Cicourel presents a detailed view of the everyday practices of the police, probation officials, and the juvenile court, and points out how these agencies can actually generate delinquency by their routine encounters with juveniles.[15] The conventional view that assumes delinquents are "natural" social types distributed in some ordered fashion is challenged. The organizational workings of the police, probation departments, the courts, and the schools are all viewed as contributing to the formation of the original events leading to contact with the law. This creation of facts in turn leads to improvised or ad hoc interpretations of character structure, family life, and future possibilities, so that particular cases are often justified as falling under an appropriate legal statute or precedent even before judicial litigation is begun. By means of this construction of cases, entitled the "creation of history," the particular case is exposed to a series of retrospective-prospective interpretations within, and disengaged from, the social contexts relevant to what actually happened. The organizational workings producing delinquency are examined in a study of the activities of two police and probation departments of approximately the same size. Variations in law enforcement are traced by examining cases from low- and middle-income families. Thus, differences in the administration of justice are demon-

[13] Emerson, Robert M., *Judging Delinquents, Context and Process in Juvenile Court;* Chicago: Aldine Publishing Company, 1969, 293 pp.

[14] University of Michigan, Institute for Juvenile Hearing Officers, *The Juvenile Court: Organization and Decision-Making,* (Paper 1), by Robert D. Vinter, and Rosemary C. Sarri; Ann Arbor: the University, 1964, 20 pp. (mimeographed).

[15] Circourel, Aaron V., *The Social Organization of Juvenile Justice;* New York: John Wiley, 1968, 745 pp.

strated, and the method by which community political structures influence juvenile justice is presented.

The Scope of Juvenile Court Law

Juvenile court law has traditionally been defined as covering criminal conduct, misbehavior, and neglect, as these categories are presented to juvenile courts. This means that juvenile court law is primarily procedural, and not substantive, for it does not in and of itself proscribe or prescribe activities. To find out what is illegal one must generally look to the criminal law; juvenile court law merely decrees how persons of certain ages are to be processed if they act illegally (delinquency jurisdiction), or if they are the victims of others' illegality (the neglect jurisdiction).[16]

Beginning with the New York Family Court Act of 1962 [17] and the California Juvenile Court Act of 1961,[18] increased attention has been paid to the one group of juvenile "offenders" for whom juvenile court law does proscribe acts—namely, misbehaving children. Older laws include within the criminal jurisdiction such acts as truancy and absconding, acts which if committed by adults are not criminal. Similarly, one finds old laws proscribing fornication and consumption of alcoholic beverages by minors, where these actions are typically not punishable when engaged in by adults. Finally, the delinquency statutes included a general (literally "catch-all") category of children who are "incorrigible," who in the words of the Tennessee Act are "beyond the control of (their) parents or guardian or other lawful custodian." [19]

What these old laws said, essentially, is that children would be punished for acts that are permissible for adults. The new laws ostensibly recognize that this is something qualitatively different from merely handling children in a different court and correctional system. Thus, the New York law created the category of "persons in need of supervision" for noncriminal but illegal conduct,[20] and the California law placed such conduct in a different provision of the juvenile court law than that covering criminal acts.[21]

The new nomenclature makes no difference whatsoever. In New York, persons in need of supervision may be committed to the training schools as may delinquents; [22] in California, the non-

[16] The terms "delinquency" and "neglect" are often omitted in the statutes: see Standard Juvenile Court Act, section 8.

[17] McKinney's Consolidated Laws of New York Annotated, Book 29A.

[18] *Supra* at note 10.

[19] Tennessee Code Annotated section 37-242-5; see also Ohio Code section 2151.02 (repealed 1969).

[20] Family Court Act, section 712(b).

[21] Welfare and Institutions Code, section 601.

[22] Family Court Act, section 756, as amended 1969.

criminal miscreant may not be committed to the Youth Authority (which runs the California training schools) directly, but may, and often does, wind up there as a probation violator, still without having been adjudicated on the basis of a criminal act.[23]

The lack of necessity for this "incorrigibility" jurisdiction and the lack of effective distinction between delinquent and nondelinquent behavior have been enunciated in several recently published articles.[24] Delegates from 84 nations attending the Second United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1960 took the same position.[25] The only noticeable trend, however, is to retain jurisdiction over non-law violators, and in fact to continue to deal correctionally with delinquents and misbehavers in the same institutions.[26] Thus, the ostensible trend toward separation of criminal from noncriminal jurisdictional bases for dealing with children is a hoax.

McKay has pointed out that since juvenile courts have jurisdiction not only over children guilty of acts which would be criminal if committed by an adult, but also over certain children who have not committed any specific criminal act at all, typically described as "incorrigible" or "beyond the control of their parents," they may receive the same dispositional treatment as the juvenile who has committed a felony.[27] The *Gault* decision (1967), which held that due process requirements must be satisfied in juvenile courts, implied that the juvenile court jurisdiction over children who have committed no specific criminal act, and yet face a period of incarceration, would be subject to constitutional challenge on several grounds. Juvenile court statutes which use such terms as "incorrigible" or "disobedient" are similar to the status offenses (such as vagrancy), and are subject to criticism on the same grounds of vagueness as are the vagrancy statutes. The Supreme Court decision in *Robinson* (1962) indicated that the cruel and unusual punishment clause might be held to invalidate juvenile court jurisdiction over "incorrigible" children. The juvenile statutes governing noncriminal children also might be attacked on the grounds of "status crime," in which the alleged offense is a personal condition rather than a specific act, or on the grounds of equal protection of the laws. The *Gault* decision has brought

[23] Welfare and Institutions Code, section 602.

[24] See Glen, Jeffrey E., Juvenile court reform: procedural progress and substantive stasis, 1970 *Wis. L. Rev.* This area was first dealt with critically in Rubin, Sol, Legal definition of offenses by children and youth, 1960 *U. Ill. L. F.* 512. See also Sheridan, William H., Juveniles who commit noncriminal acts: why treat in a correctional system? 31 *Federal Probation* 26 (1967).

[25] See Morris, Charles V., Worldwide concern with crime, 24 *Federal Probation* (December, 1960), pp. 21–30.

[26] See Glen, Jeffrey E., Developments in juvenile and family court law, 16 *Crime and Delinquency* (1970), p. 198.

[27] McKay, Malcolm V., *Juvenile Court Jurisdiction Over Non-Criminal Children*, (unpublished legal survey).

about needed procedural reforms and may eventually result in a total reexamination of the entire court system.

The degree to which an offense committed by juveniles influences the severity of the treatment decided upon at the probation investigatory level and at the adjudicatory level was examined in California.[28] Weighting systems were devised for both probation determinations and court dispositions. The data used in the study were derived from reports of 1965 activity as submitted to the California Bureau of Criminal Statistics by 56 county probation departments. Thirteen thousand, seven hundred and fifty cases were derived from reports of 1965 activity as submitted to the weights were assigned. The findings were interpreted as indicating that the severity of the treatment has a direct relationship to the severity of the offense and that the juvenile delinquent is treated in much the same way as the adult, that is, more severe treatment is given to juveniles in cases where the offenses involved would demand heavier penalties for adults as prescribed by the criminal code.

Outside the misbehavior area, one finds that juvenile courts have been vested with more areas of jurisdiction than has formerly been the case. The Standard Juvenile Court Act, for example, recommends that the juvenile court have exclusive original jurisdiction over custody determinations, adoption, and the treatment or commitment of mentally defective or mentally ill minors.[29] Most new laws have adopted the broader jurisdiction.[30] In addition, several states have adopted family court acts, based more or less on NCCD's Standard Family Court Act.[31] A family court includes, in addition to the juvenile jurisdiction described above, jurisdiction over matrimonial actions and criminal conduct committed between members of a family. New York, Hawaii, and Rhode Island have adopted the family court model.[32] In states in which all family jurisdiction is in one court, such as Oregon and Washington, a family court division of the court of general trial jurisdiction can be established administratively, and there can be one social service-probation agency handling all family cases. Very likely a further consolidation of jurisdiction, along the lines of the family court, will be seen in the future.[33]

[28] California, Criminal Statistics Bureau, *The Influence of Offense Upon the Administration of Juvenile Justice*, prepared by R. A. Rasmussen; Sacramento: the Bureau, 1966, 7 pp.

[29] Standard Juvenile Court Act, section 8.

[30] See, e.g., Colorado Children's Code, section 22-1-4.

[31] National Council on Crime and Delinquency, 1959.

[32] New York Family Court Act, *supra*, at note 19; Hawaii Rev. Stats. ch. 571, Rhode Island Gen. Stats. Sec. 8-10.

[33] The family court concept is explained in Rubin, Sol, The Standard Family Court Act, 1 *J. Fam. L.* 105 (1961); Sheridan, William H., and Brewer, E., The family court, 4 *Children* 67 (1957). Also see Dyson, E. D., and Dyson, R. B., Family courts in the United States, 8 *J. Fam. L.* 505 (1968).

Over the years, a continuing controversy has existed over the proper age differentiation between juvenile court and criminal court jurisdiction.[34] The Standard Juvenile Court Act, and most existing State legislation, sets eighteen as the age below which a child is subject to the jurisdiction of the juvenile court. However, a number of states have maintained a lower age for the delinquency jurisdiction—in Illinois it is seventeen years, while in New York and North Carolina it is sixteen—while keeping the neglect jurisdiction at age eighteen. On the other hand, California has extended jurisdiction in the juvenile court to age twenty-one, there being concurrent jurisdiction between the juvenile and the criminal courts over the eighteen to twenty-one age group.

The difficult question of what to do with the older adolescent who commits an offense has been dealt with in several jurisdictions through the youthful offender concept.[35] In some states, a separate judicial procedure has been established, either by statute as in New York or by practice as in Chicago and Baltimore, for some minors between the ages of sixteen and twenty-one. In the New York system, minors between the ages of sixteen and eighteen are eligible for youthful offender treatment in criminal court. This means that, if approved for such treatment, no criminal record is entered and any institutional commitment is to the reformatory, rather than the penitentiary. A more common differentiation is in the correctional area—several states, including Indiana and Virginia, having established separate institutions for young felony offenders.

Juvenile Court Judicial Procedures

As originally conceived, the juvenile court hearing was to be an informal inquiry into a child's acts and his social strengths and weaknesses, with any resulting disposition aimed primarily at increasing his conformity to behavioral norms and enhancing his maturation. While never fully accepted as a viable goal, this concept of the juvenile court process was dealt its death blow by the United States Supreme Court in a decision entitled *In the Matter of Gault*.[36] There, the Supreme Court noted that commitment to an institution, whatever its purposes, amounts to imprisonment, and may be justified only by a hearing with comports to constitutional requirements of due process.

The *Gault* case dealt only with children charged with behavior which, under the applicable State law, could eventuate in an insti-

[34] See generally Problem of age and jurisdiction in the juvenile court, 19 *Vanderbilt L. Rev.* 833 (1966).

[35] See Rubin, Sol, et al., *The Law of Criminal Correction*, St. Paul: West Publishing, 1963, ch. 12, Youthful offenders.

[36] 387 U.S. 1 (1967).

tutional disposition, and established four rights: the right to adequate notice of the acts allegedly giving the court jurisdiction over the child, the right to appear by counsel and to have counsel appointed if indigent, the right to remain silent in face of an accusation, and the right to confront and cross-examine witnesses against him. Left undecided in *Gault* were two crucial trial rights, namely the right to a trial by jury and the right to have one's involvement in illegal activity proved by a high standard of proof. These latter issues are the subject of current litigation; the courts have decided both ways, but there is an increasing trend in both appellate decisions and new legislation toward establishing a high standard of proof, either proof by clear and convincing evidence which is used in civil law for issues of special gravity, or to require proof beyond a reasonable doubt, the criminal law standard.[37] Fewer courts, and fewer statutes, have adopted the jury trial requirement, and it may be argued that if all other juvenile court proceedings are fair, and a high standard of proof required, the safeguard of a jury may not be essential.[38]

The pattern of a juvenile court adjudicatory hearing in the age of *Gault* is emerging in such standard-setting publications as the *Model Rules for Juvenile Court*,[39] the *Uniform Juvenile Court Act*,[40] and the *Legislative Guide for Drafting Family and Juvenile Court Acts*,[41] as well as in the recent juvenile court law revisions in several states. Adequate notice of the charges is assured by a requirement of serving a summons and a copy of the petition upon the child and his parents, custodian, or guardian. A notice of the right to retain counsel, including the right to having counsel appointed if the child is unable to afford it, is served with the summons. Under the new Kansas statute, counsel is nonwaivable; if a child does not appear with counsel of his own choosing, counsel will be appointed for him.[42]

In contested adjudicatory hearings, one finds the petitioner represented by a legal officer of the State more and more frequently. With attorneys on both sides, the contested hearing takes on more of the flavor of the adversary criminal trial, with the judge maintaining a neutral role as fact finder, rather than actively engaging himself in the eliciting of testimony. Recent deci-

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[37] See, e. g., *In re Agler*, 249 N.E. 808 (Ohio 1969), calling for clear and convincing evidence; Colorado Children's Code §22-3-6-1, *In re Urbosek*, 232 N.E. 2d .73 (Ill. 1967), both calling for proof beyond a reasonable doubt.

[38] See Glen, Jeffrey E., *op. cit.* On juvenile court procedural rights in general, see Dorsen, Norman, and Rezneck, D. A., Gault and the future of juvenile law, 1 *Fam. L.Q.* 1 (1967), and George, B. J., Juvenile delinquency proceedings: the due process model, 40 *U. Colo. L. Rev.* 315 (1968).

[39] Council of Judges of NCCD (1969).

[40] National Conference of Commissioners on Uniform State Laws (1968).

[41] Children's Bureau publication No. 472-1969.

[42] Kansas Statutes §68-801.

sions have brought into the juvenile court process such refinements of the criminal law as the requirement that the testimony of a witness under a certain age be corroborated,[43] and that no social or otherwise irrelevant testimony be produced before the finding of guilt or innocence.[44]

An interesting study was made of the effect of the 1961 California Juvenile Court law to determine the possibility of changing behavior patterns by legislation.[45] Attempts at measuring certain consequences of the law were unsuccessful, due to confusion over the definition of arrest and concurrently changing factors affecting the police and the courts, and because the effects of the law could not be separated from normal growth factors. It was, however, possible to assess the success of the new law in giving attorneys formal entry into the juvenile court. The evidence that representation by counsel more often secured a favorable disposition was impressive. Proportionately, dismissals and informal probation were ordered nearly three times as frequently in attorney as in nonattorney cases; wardships were more often declared in nonattorney cases, and, with no attorney on hand, children under wardship were more likely to be placed away from home. Private attorneys were somewhat more successful in obtaining dismissals than were public defenders. The new role of counsel gave rise to new adaptations among the participants in the juvenile court process which could defeat the intent of the law. It was concluded that while formal structures are changeable in anticipated directions, the detailed forms taken by the new roles in these structures were less subject to change.

In a study of the Chicago court, 51 private attorneys who had represented juvenile clients in the juvenile court were interviewed in relation to defense work in the court system.[46] In addition to the interviews with attorneys, hundreds of hours were spent in observing juvenile court practices. The findings indicated that private lawyers in juvenile court were typically small-fee practitioners who make their living from minor criminal and civil matters, and that the juvenile court generated its own system of complicity which did not encourage the kinds of informal bargaining arrangements that were found in the criminal courts. Among the occupational hazards found to exist in the juvenile court were modest and undependable fees; the lack of significance of informal bargaining and negotiated pleas; lack of fringe bene-

[43] *In re Steven B.*, 293 N.Y.S. 2d 946 (App. Div., 1st Dept. 1968).

[44] *In re Coren*, 72 Cal. Rptr. 115 (Ct. App. 1st Dist. 1968).

[45] Lemert, Edwin M., Legislating change in the juvenile court, *Wisconsin Law Review*, No. 2:421 448, 1967.

[46] Platt, Anthony, and Friedman, Ruth, The limits of advocacy: occupational hazards in the juvenile court, *University of Pennsylvania Law Review*, 116(7):1156-1184, 1968.

fits; and a possible conflict of interest between a client and his parents. The research supported the proposition that lawyers in juvenile courts will be coopted into a powerfully entrenched welfare system and pressured into abdicating their adversary functions in order to minimize conflict, but it also suggested that small-fee lawyers readily subscribe to a policy of benign paternalism. The findings supported the conclusion that private lawyers do not enhance the bargaining power or rights of young offenders, but rather help to consolidate their dependent status.

Another study analyzed the role of the public defender representing juveniles in a large midwestern city.[47] In 1966, "Metro's" juvenile court handled a total of 11,636 delinquency cases (25 percent were "adjusted" by administrative officers and were not referred to the courts because of a lack of evidence or seriousness). In the period of a year, the public defender handled 345 delinquency cases representing four percent of the total court caseload of 8,920 cases. These cases account for 87 percent of his total caseload during the year. The average client was a 14 and one-half years old Negro male. Juveniles with records who were charged with serious offenses were more likely to be assigned to the public defender. Analysis of individual cases showed that the public defender (1) rarely appeared at detention hearings; (2) made oral rather than written motions (in 83 percent of the cases he made no motions at all); (3) had no continuances in one-third of his cases; (4) held only one client conference prior to the court hearing in almost one-half of his cases; and (5) had no witnesses in over one-half of his cases. Relatively few of his cases, three and one-half percent, were dismissed on the motion of the State's attorney. Prosecutors were apparently unwilling to release juvenile defendants, even though concrete evidence for a conviction might be lacking. The public defender in juvenile court was formally discouraged from plea bargaining, and he pleaded fewer clients guilty (25 percent) than did his counterparts in criminal courts (30 percent). Because the rule of reasonable doubt did not apply, prosecutors won juvenile cases with minimal evidence. Research, however, supports Skolnick's assertion that the public defender can often be more effective than a private lawyer in obtaining dismissals or light sentences.

A growing trend in juvenile court practice is the bifurcation of the adjudicatory hearing from the dispositional hearing. Juvenile court law is coming to realize that the factual issues at stake in a contested adjudication are indistinguishable from those at issue in a contested criminal matter, and consequently the fact-finding

[47] Platt, Anthony; Schechter, Howard; and Tiffany, Phyllis, In defense of youth: a case study of the public defender in juvenile court, *Indiana Law Journal*, 43(3):619-640, 1968.

processes in the two systems are fast becoming identical. However, the rehabilitative and individualized aspects of juvenile court jurisprudence maintain their full validity at the dispositional stage of the juvenile court process. Here, an attorney for the State is rarely present, the rules of evidence are not in effect, and the atmosphere, ideally, is one of cooperation between all parties toward discovering the best treatment pattern for the child. It should be noted that such an approach does not differ in theory from that underlying sentencing in the criminal process. However, it is historically true that more attention is paid to a child's individual needs and problems than in the criminal context.

What then is the effect of these procedural reforms on the juvenile court? Some studies have reported lower commitment rates, but a greatly increased detention problem, and a marked slowdown in juvenile court work.[18] We suspect, however, that any increase in complexity and consequent slowdown in the adjudication process brought about by procedural reform can be, and has been, offset by reduced referral of children for official court action and increased diversion of children from the court.

Pre-Judicial Procedures

Along with procedural formalities, there has been a shift away from viewing the juvenile court as a catchall social agency and toward viewing the court as the governmental agency of last resort in dealing with children. The emphasis now, in many courts, is toward maximum diversion of cases, discouraging the police from arresting children for minor misbehavior, in favor of stationhouse adjustment rather than court referral, in favor of refusing court action at the intake stage, and in favor of dismissing petitions rather than placing children on "paper probation." How much of this diversion is actually occurring is difficult to assess; there are cities in which almost every child is proceeded against on a formal petition, and other localities where the formal juvenile court process is almost never invoked.

The trend toward diversion blossomed in the report of the President's Commission on Law Enforcement and the Administration of Justice. That body recommended the establishment of a new entity, the Youth Service Bureau, which would take children who otherwise would enter the formal juvenile court process and develop a comprehensive social plan for them. As conceived by the Commission, the Bureau does not primarily provide services

[18] See, e.g., Alper, B. S., The Children's Court at three score and ten: will it survive *Gault*? 34 *Albany L. Rev.* 46 (1969).

to children, but rather sees that services are provided, on a coordinated basis, by other community agencies. Several bureaus, modelled more or less on the crime commission proposals, have been set up and studied; the major problem seems to be that coordination of resources—where there are no resources—does not help things very much.[49]

The procedural revolution in juvenile court law has had its effects on the pre-judicial process. It is now quite clear that the requirements of *Miranda* vs *Arizona* bind the police in dealing with youthful law violators.[50] Further, because of the presumed immaturity and inability of children to protect their own rights, several courts, and NCCD's *Model Rules for Juvenile Courts*, have provided that a child's statement to police or probation officers without the advice of counsel is inadmissible at the juvenile court hearing, unless his constitutional rights were competently and intelligently waived both by the child and by his parent or guardian.[51] The practical effect of this rule is uncertain: on the one hand, police may be encouraged to follow the commands of almost every juvenile court statute and immediately deliver any child taken into custody to the court, while on the other hand, police may feel impelled to set up their own, quasi-judicial hearing processes to deal with children without court referral at all.[52]

With the increased importance of the intake process, which under the new doctrine is to serve as a screening and filtering device and not merely as a unit to prepare cases for court, has come increased attention on possible abuses of children's rights at this point. Probation officers, like police, must inform the child and his parent of their rights to counsel and to remain silent, and, in order to encourage the free flow of information at the intake point, several statutes and the *Model Rules* provide that statements made at intake may not be used in the court proceeding.[53] While "informal adjustment" that is the provision of probation-type services without a court adjudication is still encouraged, a number of states have provided that such activity be limited to a two or three month period, and also have insisted that a child who maintains his innocence has the right to a court hearing and need not accept the benevolent and sometimes irritating offers of assistance from probation officers.[54]

[49] See Norman, Sherwood, *Delinquency Prevention Through Community Youth Service Bureaus*, to be published by NCCD.

[50] See, e.g., *Forest* v. *State*, 455 P. 2d 368 (Wash. 1969); *In re Teters*, 70 Cal. Rptr. 749 (Ct. App. 3rd Dist. 1968).

[51] See Model Rule 25, and *Matter of Aaron D.*, 290 N.Y.S. 2d 935 (App. Div. 1st Dept. 1968).

[52] See practices described in Note, Juvenile delinquents: the police, state courts, and individualized justice, 79 *Harv. L. Rev.* 775 (1966).

[53] See Model Rule 4 and N.Y. Fam. Ct. Act §§334.735.

[54] See Model Rule 4 and comment thereto.

Detention

Under juvenile court law, a child may be held in detention before his adjudicatory hearing on several grounds: that he is a potential runaway, that he must be held for pending proceedings in another jurisdiction, and most controversially, that he constitutes a danger to himself or to the community.[55] In other words, juvenile court law has traditionally recognized the legitimacy of preventive detention.

While there is no trend to narrow the grounds for detention, emphasis has been placed on procedural controls over the detention process. In the judicial area, many states have established detention hearing provisions, either mandatory, or on request after notice of the right to a hearing.[56] These hearings must be held promptly after admission to detention, usually within 24 or 48 hours, and have served as an important screening device to reduce detained populations. An effective detention hearing system, with counsel provided to children not privately represented, has proven to be an adequate substitute for the adult system of bail hearings, and few appellate courts have required that bail be made available if this alternative system is operative.[57] Further, it is generally accepted that there is no need for formal arraignment in the juvenile court system, for the task of making out the *prima facie* case in the juvenile system is delegated to the probation department, which must pass on and approve any petition for formal court action.

Transfer to the Adult Criminal Justice System

In all but a handful of states, certain children under the juvenile court age may be transferred to the adult criminal justice system, either before the juvenile court hearing or after entry into the juvenile correctional system. The Standard and Uniform Juvenile Court Acts provide, for example, that a child 16 years of age or over who is charged with an act which, if committed by an adult, would constitute a felony, may, after a full investigation and hearing, be transferred from the juvenile court to the criminal court for prosecution as an adult.[58] Under the United States Supreme Court case of *Kent* vs *United States*,[59] such a transfer must be preceded by a judicial hearing, with counsel, testing the

[55] *Standards and Guides for the Detention of Children and Youth*, NCCD 1961, pps. 15-17.

[56] See, e.g., Cal. Welfare Inst. Code §632, and Minnesota Stats. Ann. §260.171.2. Comprehensive detention hearing schemes, including mandatory hearings, are contained in Article V of the Model Rules and §§14-17 of the Uniform Juvenile Court Act.

[57] See discussion in *Fulwood* v. *Stone*, 394 F. 2d 106 (D.C. Cir. 1967).

[58] Standard Act §13; Uniform Act §34.

[59] 383 U.S. 541 (1966).

necessity for the transfer; the State must exhaust all possible juvenile correctional alternatives before denying the child the benefits of the juvenile justice system.[60]

The stringent age and charge limitations of the standards have not been widely adopted. In many states, transfer is possible for children as young as 14, and may also occur in cases not of felony-grade allegations.[61] There is substantial doubt as to whether this loosening is justified; for example, the State of New York has no transfer provisions, and California has operated adequately under the standard criteria.

In many states, transfer to adult correctional institutions is possible after a child has been committed to the juvenile institutions. The loosest statutes in this regard permit administrative transfer, with no judicial control, for any child in a State juvenile training school, whether or not he was originally adjudicated on the basis of law violation. This purely administrative system has been held unconstitutional in several decisions, although the cases go both ways.[62] However, transfer with judicial approval has generally been upheld, and is supported, in rare cases, by the legislative standards of the United States Children's Bureau.[63]

The Standard Juvenile Court Act, on the other hand, forbids all correctional transfer.[64] Under this view, the only child in an institution who is possibly in need of adult treatment is one who commits a felony while in the institution. If this is in fact the case, he can be the subject of a new petition and a transfer hearing, thus affording him all the rights of other children his age.

Recently, several courts have entertained legal proceedings involving children already committed to institutions or awaiting court action in detention. This phenomenon stems from two sources: the expansion of concern by the courts with prisoners' rights, as manifested in the United States Supreme Court case of *Johnson* vs *Avery* and many lower Federal court decisions dealing with prison discipline, right to worship and to correspond with the court, etc.,[65] and the new concern with the so-called "right to treatment" of persons involuntarily confined for rehabilitative purposes.[66]

While few cases on behalf of juveniles have been brought directly under the prisoner's rights doctrine, there is no doubt that

[60] *Kent* v. *United States*, 401 F. 2d 408 (D.C. Cir. 1968).

[61] See statutes collected in comment to Model Rule 9.

[62] See *Shone* v. *Maine*, 406 F. 2d 844 (1st Cir. 1969), vacated as moot, 90 S. Ct. 25 (1969), collecting the cases.

[63] See *Delinquent Children in Penal Institutions*, Children's Bureau Publication No. 415–1964.

[64] Standard Act §24, lines 57–60.

[65] See articles in the symposium, Rights of prisoners in confinement in the United States, 48 *Prison Journal* No. 1 (Spring-Summer 1968).

[66] See articles in the symposium, The Right to Treatment, 57 *Georgetown L. J.* 673 (1969).

this approach is equally valid in the juvenile as in the adult area. Already, segregation in training schools has been invalidated,[67] and a great expansion of court review of the conditions of confinement in training schools and detention facilities is anticipated.

The major breakthrough in this general area has been, however, in the "right to treatment." This doctrine was developed in regard to involuntary hospitalization of the mentally ill, where it had become established that confinement of nondangerous mental patients is legal only if adequate efforts at cure are made.[68] Courts have held that a child in detention must get psychiatric treatment, where indicated, or be released;[69] in one case, a deaf child was ordered released unless special educational arrangements were made for him pending court disposition.[70] A number of cases have been brought to require juvenile correction systems to raise the level of services, particularly educational services, in their juvenile institutions, and cases are being brought seeking release, not merely new services, when services for children are inadequate.

While these cases are new, the Standard Juvenile Court Act, and statutes modeled on it, have provided a vehicle for testing the adequacy of institutional care—a vehicle that has rarely if ever been used. The Standard Act provides:

> A parent, guardian, or next friend of a minor whose legal custody has been transferred by the court to an institution, agency, or person may petition the court for modification or revocation of the decree, on the ground that such legal custodian has wrongfully denied application for the release of the minor or has failed to act upon it within a reasonable time, and has acted in an arbitrary manner not consistent with the welfare of the child or the public interest.[71]

This provision should provide an excellent opportunity for creative litigation, for it seems to give a right to release if the institution is not acting in a manner consistent with the best efforts to promote the early return of the child to society and his family.

[67] *Board of Managers* v. *George*, 377 F. 2d 288 (8th Cir. 1967), certiorari denied 389 U.S. 845.

[68] See Rubin, Sol, Illusions of treatment in sentences and civil commitments, 16 *Crime and Delinquency* 79 (1970).

[69] *Creek* v. *Stone*, 379 F. 2d 106 (D.C. Cir. 1967).

[70] *In re Harris*, Cook Cty. Cir. Ct. 1967, 2 Cr. L. 2412.

[71] Standard Act §26.

Conclusion

The battle for procedural reform of the juvenile court has basically been won; there remains an extensive mopping up operation to drag recalcitrant courts, judges, and staffs into the world of due process. But the victory does not really mean very much. It will, it is true, be more difficult to send a child who has not committed a crime to a training school, particularly if he has a good lawyer and the offense alleged cannot be magically turned into an allegation of "incorrigibility." This is important. But nothing in the procedural revolution will keep runaways out of the institutions, renovate homes that are unfit for habitation, persuade parents to stop filing complaints of ungovernability on their children. The juvenile courts will continue to serve as the public repository of the private sector's failures—a system of kibbutzim to which the price of entry is a purse-snatching.

The need now is to examine seriously those conditions that produce an unjust system—racism, economic class oppression, arbitrary power in the hands of irresponsible bureaucracies, confinement as the treatment of choice for persons who challenge the stability of the existing national power distribution. Until delinquent behavior by children and neglect of children by parents ceases to be a rational response to life in America, the trends outlined herein will have little effect on the betterment of justice. Neither will the opportunity exist to learn how to provide services that enhance desirable youth development and life experiences.

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HEW-396

DHEW Publication No. (HSM) 73-9073
(formerly DHEW Publication No. (HSM) 72-9115)
Reprinted 1972
Reprinted 1973

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